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September 18, 2018

Via CM/ECF

Hon. David N. Hurd, U.S. District Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 424
Albany, New York 12207-2926

RE: **Grant v. City of Syracuse, et al.**
Civil Action No.: 5:15-CV-445

Dear Honorable Judge David N. Hurd,

I. INTRODUCTION AND BACKGROUND

This case arises out of an incident that occurred on June 28, 2014, where Plaintiff Alonzo Grant was savagely beaten by Defendant Officers Damon Lockett and Paul Montalto. Mr. Grant had committed no crime, had no weapons, and engaged in no violent conduct. It was Mr. Grant who called the police for assistance with his adult daughter.

On June 28, 2014 Plaintiff Alonzo Grant made a 911 call to request the assistance of law enforcement to address his adult daughter who refused to leave his home. In response to a request from 911 dispatch, Defendant Officers Lockett and Montalto responded to Mr. Grant's request for assistance. Prior to the beating, Defendant Officers Lockett and Montalto only had the information provided by the 911 dispatch. Neither defendant heard the 911 call, prior to arriving at the Grant's home. Neither Defendant knew of or had prior experience with Mr. Grant.

On arriving at the scene, Defendant Officer Lockett entered the Grant's home, without a warrant or invite, and ordered Mr. Grant to go outside to talk with Defendant Officer Montalto. As Mr. Grant descended the stairs leading to the sidewalk in front of his home, for no legal or justifiable reason, Defendant Officer Lockett, grabbed Mr. Grant around his waist and with the

assistance of Defendant Officer Montalto, threw Mr. Grant over the railing and proceeded to punch, kick, and choke Mr. Grant.

In this action, Plaintiffs Alonzo and Stephanie Grant bring causes of action under 42 U.S.C. 1983 and other state laws for this heinous violation of Mr. Grant's Fourth Amendment rights.

At issue in this case is whether the Defendant Officers acted reasonably based on the information they had at the time they responded. This *in limine* motion seeks an order to prevent the defendants from introducing evidence that was not known to the Defendant Officers at the time they arrived on the scene.

MR. GRANT'S 911 CALL

During the course of trial, Plaintiffs anticipate that Defendants will attempt to introduce the audio recording or transcript of Mr. Grant's 911 call on June 28, 2014. In this call, Mr. Grant asks for the cops to come to his home to help him deal with his daughter Alyssa Grant. During the 911 call, in response to a question by the dispatcher asking what was going on, Mr. Grant states, "my daughter, she acting like a fucking asshole and get the fuck away from my house."

The substance of Mr. Grant's call was relayed by the dispatcher as "M911 OPEN LINE W/ ARGUMENT – MALE REQUESTING OFFICERS BE SENT TO ADDRESS RE: DAUGHTER ALYSSA GRAHAM – COMPL[AINANT] UNCOOPERATIVE – DISC." The only information Defendant Officers Lockett and Montalto had at they arrived at the Grant's home was the information from dispatch. Neither of the Defendant Officers heard the 911 call prior to arriving on the scene. See Exhibit 1 Locket Depo pg 27-28; Exhibit 2 Montalto Depo pg 28.

SHOVEL INCIDENT

During the course of trial, Plaintiffs anticipate that Defendants will attempt to introduce evidence of an incident that occurred sometime prior to the June 28, 2014 beating where Mr. Grant again called 911 for police assistance. Defendant Sgt. Novitsky alleged during his deposition that during this incident, Mr. Grant was wielding a shovel in his front yard. The only information provided to Plaintiffs regarding this incident was from Defendant Sgt. Novitsky during his Deposition. Novitsky stated that during the course of the litigation, in an attempt to find information helpful for his defense and without any direction from his supervisors, Defendant Sgt. Novitsky violated Mr. Grant's privacy and used department computers to

research Mr. Grant's criminal history. See Exhibit 3 Novitsky Depo pg 53-55. During this investigation he reviewed this prior incident but had no memory of any details. Defendant Sgt. Novitsky was not present during the alleged incident.

OPEN CONTAINER TICKET

Also during his investigation, Defendant Sgt. Novitsky found what he called an "open container arrest" from 1970. See Exhibit 3 Novitsky Depo pg 53. Plaintiffs anticipate that Defendants will attempt to introduce evidence of this open container issue during the course of the trial.

III. ANALYSIS

A district court's inherent authority to manage the course of its trials encompasses the right to rule on motions *in limine*. See *Luce v. United States*, 469 U.S. 38, 41 n.4, 105 S. Ct. 460, 83 L. Ed. 2d 443 (1984). Indeed, "[t]he purpose of an *in limine* motion is to aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial." *Palmieri v. Defaria*, 88 F.3d 136, 141 (2d Cir. 1996) (internal quotation marks omitted); see also *Commerce Funding Corp. v. Comprehensive Habilitation Servs., Inc.*, No. 01 Civ. 3796, 2005 U.S. Dist. LEXIS 7902 at *9, 2005 WL 1026515 at *3 (S.D.N.Y. May 2, 2005) (Leisure, J.) ("The purpose of a motion *in limine* is to allow the trial court to rule in advance of trial on the admissibility and relevance of certain forecasted evidence.").

Rule 402 of the Federal Rules of Evidence provides that "[a]ll relevant evidence is admissible, except as otherwise provided by . . . Act of Congress, [or] by these rules. . . *Evidence which is not relevant is not admissible.*" Fed. R. Evid. 402. (emphasis added) The "standard of relevance established by the Federal Rules of Evidence is not high." *United States v. Southland Corp.*, 760 F.2d 1366, 1375 (2. Cir. 1985) (Friendly, J.). Evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence" is relevant. Fed. R. Evid. 401.

Under Rule 403 of the Federal Rules of Evidence, the trial court has "broad discretion to exclude even relevant evidence if its probative value is substantially outweighed by the danger of confusion of the issue or if it would be needlessly cumulative." *United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1193 (2d Cir. 1989) (citing Fed. R. Evid. 403; *United States v.*

Carter, 801 F.2d 78, 83 (2d Cir. 1986); *United States v. Martinez*, 775 F.2d 31, 37 (2d Cir. 1985)). Rule 403 also provides for the exclusion of relevant evidence if "its probative value is substantially outweighed by the danger of unfair prejudice." Fed. R. Evid. 403. Evidence is prejudicial under Rule 403 if it "involves some adverse effect . . . beyond tending to prove the fact or issue that justified its admission into evidence." *United States v. Gelzer*, 50 F.3d 1133, 1139 (2d Cir. 1995). The Court will exclude such evidence if it has "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Fed. R. Evid. 403, advisory committee's notes. The "district court regains broad discretion to balance the evidence's potential prejudice . . . against its probative value." *United States v. Downing*, 297 F.3d 52, 59 (2d Cir. 2002).

911 Call

In this case, the defendant officers did not hear the 911 call prior to responding to the Grant's home. Whatever Mr. Grant said or how he said it was not known to the officers and therefore could not have impacted their decisions at the time of the incident. For this reason, the evidence is not relevant to justifying the Officers' decision to grab Mr. Grant and throw him over the railing and proceed to beat him in the face and body.

Assuming it is relevant, the profanity used by Mr. Grant creates a risk of unfair prejudice. The jury could be swayed by Mr. Grant's language and make a decision based on this improper basis. Since the language used was not known to the Officers, a jury making an inference that the Officers' conduct was appropriate because Mr. Grant used bad language would be improper. Additionally, a juror's personal dislike of profanity could cause them to make a decision against Mr. Grant for words the Defendant Officers did not hear.

For these reasons, Plaintiffs respectfully request an order preventing the Defendants from playing the audio of the 911 call or introducing into evidence a transcript of the 911 call.

Shovel Incident and Open Container Ticket

Neither the shovel incident nor the Open Container ticket were known to the officers at the time they responded to the Grant's home and therefore the facts of these incidents could not have informed or motivated the Defendant Officers' conduct. Their conduct cannot be justified by any prior history of interactions with Mr. Grant, because neither of the officers knew Mr. Grant prior

to the incident where they savagely beat him. See Exhibit 1 Locket Depo pg 76; Exhibit 2 Montalto Depo pg 35-36.

Further, Fed.R.Evid. 404(b) provides the following: “Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Accordingly, evidence of prior acts may not be received unless it is relevant to an actual issue in the case and unless its probative value on that issue is not outweighed by its unfair prejudice to the defendant. *United States v. Manafortzadeh*, 592 F.2d 81, 86 (2d Cir. 1979). Since neither of the Defendant Officers knew about the prior incidents, the facts related to those incidents could only be used to argue character. This is improper and the evidence of these prior incidents is inadmissible for this purpose. Further, since Defendant Sgt Novitsky was not present for either incident, any testimony related to the incidents would be hearsay.

Based on the foregoing, Plaintiffs respectfully request an order preventing the Defendants from providing testimony or evidence related to the shovel incident and the open container ticket.

IV. CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs’ motion barring Defendants from putting on evidence or testimony regarding 1) the transcript or recording of Mr. Grant’s 911 call; 2) the shovel incident; and 3) the open container ticket.

Very truly yours,

/s/ Charles A. Bonner
Charles A. Bonner



EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
ALONZO GRANT and STEPHANIE GRANT,

Plaintiffs,

vs.

Civil Action No. 5:15-CV-445

CITY OF SYRACUSE, SYRACUSE POLICE DEPARTMENT,
POLICE OFFICERS DAMON LOCKETT and PAUL MONTALTO,
POLICE OFFICER BRIAN NOVITSKY, CHIEF OF
POLICE FRANK FOWLER and Does 1-100,

Defendants.

-----x
Videotaped Deposition of DAMON R. LOCKETT, held on
January 12, 2016, at the Offices of Precision Reporters,
P.C., One Lincoln Center, Suite 310, Syracuse, New York,
before Amanda L. Theleman, Registered Professional Reporter,
Certified Realtime Reporter, and Notary Public in and for the
State of New York.

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For Defendants: CORPORATION COUNSEL
Attorneys at Law
Department of Law
233 East Washington Street
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BY: AIMEE M. PAQUETTE, ESQ.

Also Present: Alonzo Grant
Stephanie Grant
Ilse Wolf

Litigraphics, LLC
26 Sunset Terrace
Baldwinsville, New York 13027
By: Mark Whalen, Videographer

LOCKETT - CHARLES BONNER

1 sorry. I didn't mean to cut you off, but 1930 is 7:30.

2 Q And that's military time; isn't it?

3 A Yes.

4 Q You're in the military; right?

5 A Yep.

6 Q So you're accustom to military time?

7 A Yes.

8 Q Okay. So 1931 is 7:31; true?

9 A Yes.

10 Q Okay. Now, how was your attention directed to
11 this particular incident?

12 A I was dispatched.

13 Q Okay. By whom?

14 A 911 Center.

15 Q And what -- what did the -- how does that
16 happen? Give us -- tell the jury how you got dispatched.
17 Was there -- did a call come over the radio to go to this
18 address?

19 A Yes, sir.

20 Q And what did to your best recollection the
21 call said?

22 A Sir, I don't -- I'm not really understanding
23 what you're trying to get to.

24 Q Fair enough. When you received a call, you
25 received it from your -- your police officer dispatcher?

LOCKETT - CHARLES BONNER

1 A Yes, sir, 911 Center.

2 Q Okay. And that was a man or woman to say go
3 to 105 Hudson?

4 A Yes, sir, in -- in -- in reference to a
5 domestic complaint.

6 Q Okay. Did they tell you that Mr. Grant had
7 called to have the police come and remove his then adult
8 pregnant daughter from his front yard?

9 A I don't know. I would have to look at the --
10 I would have to look at the call notes to be able to tell you
11 exactly what my 911 dispatcher told me.

12 Q Do you -- have you seen the call notes?

13 A Not since that day.

14 Q Okay. Did you make any reference in any of
15 your written reports regarding what the call notes said?

16 A No, sir.

17 Q Okay. Well, what is your best recollection?
18 You went there. Were you aware that you were going to remove
19 Mr. Grant's adult daughter who was at that time pregnant from
20 his front yard as he had requested?

21 A Your question was was I aware that I was going
22 to remove her --

23 Q Yes.

24 A -- or that he -- that he asked that police --
25 that she be removed?

LOCKETT - CHARLES BONNER

1 police department?

2 A Just because someone tells me that they don't
3 need me does not necessarily mean that a situation is not
4 occurring. Unfortunately people lie to us every day. I'm
5 not sitting here saying that Mr. Grant is a liar. I'm not
6 calling him a liar. However, people do lie to me every day,
7 and just because he said that one instance is gone unlike --
8 just because he said that she left does not -- that is not
9 the final determination in whether or not I can finish or
10 I've concluded conducting my -- conducting a preliminary
11 investigation.

12 Q In your police car, you had a computer; true?

13 A Yes, sir.

14 Q Did you run a criminal background on Mr. Grant
15 before you got to his 105 Hudson Street address?

16 A No, sir.

17 Q Did you -- did anyone tell you that he's never
18 been arrested in his life with handcuffs for any crime in his
19 then 53 years of life?

20 MS. PAQUETTE: Objection to relevance.

21 Go ahead.

22 A The day in question was the first time I ever
23 met Mr. Hudson.

24 Q Mr. Grant?

25 A I'm sorry. Mr. Grant.

LOCKETT - CHARLES BONNER

1 Q I understand that. My question is part of
2 your investigation when you're trying to find out -- to make
3 a determination if domestic violence is occurring as you must
4 do according to your policy --

5 A Okay.

6 Q -- I'm trying to understand what you do with
7 your computer. Did you try to understand who Mr. Grant was
8 before you went inside of his house?

9 A You completely confused me. Can you please --

10 Q Certainly.

11 A Yeah. Break -- can you break that question
12 down --

13 Q Certainly.

14 A -- a little bit?

15 Q I think you've answered. You did not look on
16 your computer to determine whether Mr. Grant had committed
17 any prior crimes before you entered his house; is that true?

18 A There was no need to, sir.

19 Q That's not my question.

20 A Okay. Yes.

21 Q Did you do that?

22 A No, no, no.

23 Q Okay. That's all I want you to do. If you --
24 we'll get through this much faster if you just answer my
25 question, and typically my question will be very short. It



EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
ALONZO GRANT and STEPHANIE GRANT,

Plaintiffs,

vs.

Civil Action No. 5:15-CV-445

CITY OF SYRACUSE, SYRACUSE POLICE DEPARTMENT,
POLICE OFFICERS DAMON LOCKETT and PAUL MONTALTO,
POLICE OFFICER BRIAN NOVITSKY, CHIEF OF
POLICE FRANK FOWLER and Does 1-100,

Defendants.

-----x
Videotaped Deposition of PAUL MONTALTO, held on
January 13, 2016, at the Offices of Precision Reporters,
P.C., One Lincoln Center, Suite 310, Syracuse, New York,
before Amanda L. Theleman, Registered Professional Reporter,
Certified Realtime Reporter, and Notary Public in and for the
State of New York.

A P P E A R A N C E S

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For Defendants: CORPORATION COUNSEL
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BY: AIMEE M. PAQUETTE, ESQ.

Also Present: Alonzo Grant
Stephanie Grant
Ilse Wolf

Litigraphics, LLC
26 Sunset Terrace
Baldwinsville, New York 13027
By: Mark Whalen, Videographer

MONTALTO - CABRAL BONNER

1 out. It said something to the fact he was having an argument
2 with his daughter and that he was -- and it said complainant
3 uncooperative which we get a lot. It means he's not giving
4 the dispatcher all the information that they want.

5 Q Did you ever hear the 911 call itself?

6 A Yes.

7 Q Prior to arriving at the scene, did you hear
8 the 911 call?

9 A No, after the fact.

10 Q And you understood when you got there that it
11 was a call where Mr. Grant was complaining about his
12 daughter?

13 A Yes.

14 Q Okay. And when -- and there was no
15 information that you were provided about any type of actual
16 physical confrontation going on?

17 A It was very limited. That's all I had.

18 Q And there was no discussion in what you had
19 about any kind of weapons?

20 A I told you everything that I had.

21 Q Well, it's true then there was no discussion
22 of weapons in the call -- in the information you received?

23 A Right.

24 Q No information about physical violence; true?

25 A Not that -- no.

MONTALTO - CABRAL BONNER

1 affluent area of the city.

2 Q Are you aware of the concept of community
3 policing?

4 A Yes.

5 Q What is that?

6 A I think it's, like, when the police try to
7 make good ties with the community to -- so then the community
8 can in turn help the -- help the officers better patrol the
9 area because, you know, they -- we can't be everywhere. We
10 need citizens to help us, to call us. Without that, I mean,
11 it's extremely hard for us.

12 Q Are you aware of any -- have you received any
13 trainings on community policing?

14 A Not particularly. We have a section that's
15 in -- completely of its own that deals with that aspect.

16 Q Have you ever heard Chief Fowler stress this
17 concept of community policing?

18 A I don't know directly if I have, no.

19 Q Prior to this incident where you struck
20 Mr. Alonzo Grant several times in the face did you know him?

21 MS. PAQUETTE: Objection.

22 Go ahead.

23 A No.

24 Q Had you ever talked to him before?

25 A No.

MONTALTO - CABRAL BONNER

1 Q Had you ever responded to a call involving
2 Mr. Alonzo Grant?

3 A No.

4 Q Were you aware that on this Hudson -- it
5 sounds like you understand that -- that there is potentially
6 drug dealing going on in this neighborhood?

7 A Yes.

8 Q Were you aware of a specific house on Hudson
9 where there was crack dealing going on?

10 MS. PAQUETTE: Objection to the
11 relevance.

12 Go ahead.

13 A I don't know specifically. There was a house
14 a couple houses down from his house on the same side that
15 used to be a big problem that -- like, I think there was an
16 older male that lived there, and he would let a lot of the
17 younger, you know, gang-type individuals hang out at his
18 house, but I think it's subsequently been, like, boarded up
19 and shut down.

20 Q At any time did you become aware of the steps
21 that Mr. and Mrs. Grant took to alert police of what was
22 going on at that house that resulted in the house being shut
23 down?

24 MS. PAQUETTE: Objection.

25 A Like I said, I have no idea. A lot of times

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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ALONZO GRANT and STEPHANIE GRANT,

Plaintiffs,

vs. Civil Action No. 5:15-CV-445

CITY OF SYRACUSE, SYRACUSE POLICE DEPARTMENT,
POLICE OFFICERS DAMON LOCKETT and PAUL MONTALTO,
POLICE OFFICER BRIAN NOVITSKY, CHIEF OF
POLICE FRANK FOWLER and Does 1-100,

Defendants.

-----X
Videotaped Deposition of BRIAN NOVITSKY, held on
January 14, 2016, at the Offices of Precision Reporters,
P.C., One Lincoln Center, Suite 310, Syracuse, New York,
before Amanda L. Theleman, Registered Professional Reporter,
Certified Realtime Reporter, and Notary Public in and for the
State of New York.

A P P E A R A N C E S

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Also Present: Alonzo Grant
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By: Mark Whalen, Videographer

NOVITSKY - CABRAL BONNER

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1 Q So in Syracuse, you've never experienced
2 people not wanting to speak with you for concern that -- that
3 they would be deemed -- they would be viewed as a snitch?

4 A In Syracu -- okay. No, I have not
5 experienced -- I've always been able to speak with people.

6 Q Okay.

7 A And -- and -- and, you know, people don't want
8 to talk to me just 'cause they don't want to talk to me, but
9 no one ever came up to me and outright said "I'm not talking
10 to you because I don't want to be" --

11 THE REPORTER: Can you just say that
12 again? "No one ever ..."

13 A No one -- people talk to me 'cause they want
14 to talk to me. They've never outright said to me "I'm not
15 talking taking to you because I don't want to be labeled a
16 snitch."

17 Q Okay. Since the incident, have you had any
18 communication with anyone other than your attorney regarding
19 Mr. Grant?

20 A No.

21 Q Have you done any research on Mr. Grant?

22 A No.

23 Q Have you looked up any arrest history or
24 anything like that?

25 A Yes, I did.

PRECISION REPORTERS, P.C.
(315) 422-4280

PRECISION REPORTERS, P.C.
(315) 422-4280

NOVITSKY - CABRAL BONNER

Page 53

1 Q Okay. And --

2 A Yes.

3 Q -- what did you do?

4 A After -- in preparation for the civil -- civil
5 lawsuit, I -- I just checked our reports. I checked our
6 records, and that's it.

7 Q What did you find?

8 A I found an open container arrest from 1970
9 something, and I also found a police report that Mr. Grant
10 had called the police a few -- a few years or -- I don't know
11 the exact date, before 2014.

12 Q And why did he call the police at that time?

13 A The -- there was again a dispute with the
14 daughters -- one of the daughters, I don't know which, a
15 dispute with them and the -- and -- and one of the
16 boyfriends, ex-boyfriends, or something along those lines,
17 and the report was that the boy had put a gun in the trunk of
18 his vehicle. Officers responded. They actually quickly
19 located the vehicle and -- and were able to search it but
20 didn't find the -- didn't find a weapon. But then when they
21 responded to the Grants' house, according to the report, they
22 were met by Mr. Grant wielding a shovel in the front yard.

23 Q And he was wielding it at the cops?

24 A I don't know. He had -- I haven't -- I read
25 the report once, and I haven't read it since.

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(315) 422-4280

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(315) 422-4280

NOVITSKY - CABRAL BONNER

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1 Q And why were you looking for the reports in
2 preparation for the civil -- of the civil action?

3 A Knowledge base.

4 Q You wanted to understand what Mr. Grant had
5 done in the past to help defend this case?

6 A Just knowledge base, to understand -- just
7 understand the totality of the circumstances, just understand
8 everything.

9 Q Okay. After you reviewed those reports, did
10 you print them up?

11 A I think I printed one.

12 Q Okay. And is it common practice for police
13 sergeants to be able to go into the police records and print
14 up reports for their own personal use?

15 A It's departmental use. It's not my personal
16 use.

17 Q Now, departmental use, did someone -- well, I
18 don't want to ask about anything that you did with your
19 attorney, so if your attorney asked you to do this, we don't
20 have to talk about it. But did someone ask you to review the
21 records and print up anything you found about
22 Officer Grant -- Mr. Grant? Excuse me.

23 A No.

24 Q You did that on your own?

25 A Yes.

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(315) 422-4280

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(315) 422-4280

NOVITSKY - CABRAL BONNER

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1 Q And you did that on your own in relation to a
2 lawsuit that you were personally named in; true?

3 A Yes.

4 Q Okay. So the reason you were looking for this
5 information was for your own personal -- to defend your --
6 your -- a lawsuit brought against you personally; true?

7 MS. PAQUETTE: Objection to "defend."

8 Go ahead.

9 A Yeah, it's to build a knowledge base in -- in
10 this lawsuit.

11 Q To defend a lawsuit brought against you
12 personally; true?

13 MS. PAQUETTE: Objection.

14 Go ahead.

15 A It's -- yeah, the lawsuit's against the City
16 of Syracuse.

17 Q You didn't have any knowledge about Mr. Grant
18 when you responded to his house; true?

19 A No.

20 Q Okay. So anything you learned after the fact
21 would be to try to create a character case against Mr. Grant;
22 true?

23 MS. PAQUETTE: Objection.

24 Answer that if you can.

25 A No.

PRECISION REPORTERS, P.C.
(315) 422-4280

PRECISION REPORTERS, P.C.
(315) 422-4280

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am over the age of eighteen years, employed in Marin County California. The business address is 475 Gate Five Road, Suite 212, Sausalito, California 94965.

DOCUMENT(S) : PLAINTIFFS' MOTIONS IN LIMINE

I caused to be served a true copy of the above-named document(s) per the addressee(s) listed below or per the attached list.

(X) BY ELECTRONIC SERVICE

**KRISTEN SMITH, ESQ.
H. J. HUBERT, ESQ.
CITY OF SYRACUSE
300 CITY HALL
SYRACUSE, NY 13202**

**PAUL J. TUCK, ESQ.
HANCOCK ESTABROOK LLP
100 MADISON STREET, SUITE 1500
SYRACUSE, NY 13202**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Served and executed this 18th day of September, 2018.

/s/Charles A. Bonner
Charles A. Bonner